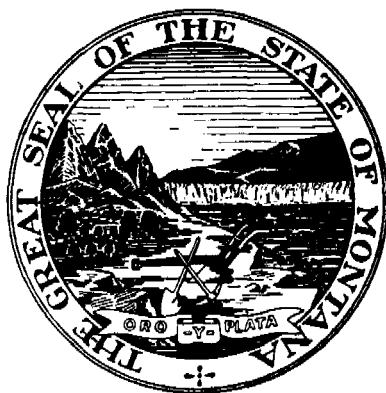


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# **MONTANA ADMINISTRATIVE REGISTER**

**1981 ISSUE NO. 3**  
**PAGES 120-155**



#### NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana, 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                               |   |
|-------------------------------|---|
| Known Subject Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.                       |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume i, ARM, to determine title number of department's or board's rules.             |
|                               | 3. Locate volume and title.   |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.   |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.  |
| Title Number and Chapter      | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)  |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.  |
| Rule in ARM                   | 8. Go to rule. Update by checking registers for past 3-4 months for notice of proposed or adopted amendments of rules listed in table of contents of MAR. |

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
Rule 12.6.401 relating to time )	AMENDMENT OF RULE
zones for daily open and closed )	12.6.401 -- TIME ZONES
hunting seasons )	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons.

1. On March 15, 1981, the Montana Fish and Game Commission proposes to amend Rule 12.6.401 relating to time zones and sunrise-sunset hour schedules.

2. The rule as proposed to be amended provides as follows:

12.6.401 TIME ZONES (1) The following time zone descriptions and sunrise-sunset hour schedules are official times for the zones designated for the purpose of setting daily open and closed seasons. The time is mountain standard and during periods of daylight savings time add 1 hour (see following 4 pages).

(2) An abbreviated version of these tables may be printed on the big game maps and may be utilized by hunters during big game seasons. The complete tables will be available at all regional offices and at the Helena headquarters.

(Note: The tables are not reproduced here but are available for inspection at any regional office, at the Helena office, or from any fish and game warden.)

3. The rule is proposed to be amended for economy in printing and for the convenience of the public.


4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Joe Egan, Wildlife Division, Department of Fish, Wildlife & Parks, 1420 E. 6 Avenue, Helena, Mt. 59620, no later than March 13, 1981.

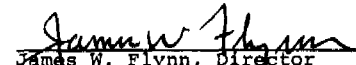
5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Joe Egan, Department of Fish, Wildlife & Parks, 1420 E. 6 Avenue, Helena, Mt. 59620, no later than March 13, 1981.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later

date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on Section 87-1-304, MCA, and the rule implements Section 87-1-304, MCA.

  
Joseph J. Klabunde, Chairman  
Montana Fish & Game Commission

  
James W. Flynn, Director  
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State January 30, 1981

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PROPOSED AMENDMENT  
of rule 36.10.111 regarding ) OF RULE 36.10.111, FIRE CACHE  
the requirements of tools. )  
 ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 16, 1981 the Board of Natural Resources and Conservation proposes to amend rule 36.10.111 concerning the required fire tools at forest product harvesting operations.

2. The rule as proposed to be amended provides as follows:

36.10.11 FIRE ~~CACHE~~ TOOLS. All persons, firms, or corporations engaged in any ~~commercial activity~~ forest product harvesting operation on forest lands shall have hand tools available for firefighting purposes ~~a fire cache~~. ~~The fire cache~~ There shall ~~consist of~~ be at least one shovel (round pointed no. 0 or larger) and one pulaski tool for each two persons employed at the site of the activity. Each vehicle used in a commercial activity shall carry a shovel (round pointed no. 0 or larger) and either an axe or a pulaski tool. All tools shall be in good condition and immediately accessible for firefighting purposes. ~~The fire cache tools shall be enclosed in a separate box marked specifically "FOR FIRE USE ONLY".~~ Substitution of other types of hand tools to provide increased efficiency or effectiveness may be made by mutual written agreement between a person, firm, or corporation and the recognized fire protection agency having jurisdiction.

3. The agency proposes to amend the rule so as to correspond with fire tool requirements at federal forest product harvesting operations. The amendment would be a reduction in the present state requirements.

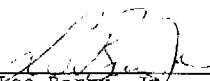
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Gary Brown, Acting Administrator, Division of Forestry, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana, 59801, no later than March 13, 1981.

5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Gary Brown, Acting Division Administrator, Division of Forestry, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana, 59801, no later than March 13, 1981.



6. If the Department of Natural Resources and Conservation receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 60 persons based on 600 persons or entities engaged in the forest harvesting industry.

7. The authority of the board to amend the proposed rule is based on section 76-13-109 MCA and the rule implements section 76-13-101, MCA.

  
\_\_\_\_\_  
Leo Berry, Jr.  
Director  
Department of Natural  
Resources and Conservation

Certified to the Secretary of State February 2,  
1981.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION AND THE BOARD OF  
LAND COMMISSIONERS  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARINGS
of rules pertaining to	)	FOR THE ADOPTION OF RULES
surface licensing of state	)	PERTAINING TO SURFACE
forest lands and repeal of	)	LICENSING OF STATE FOREST
ARM 36.11.101	)	LANDS AND ON REPEAL OF
	)	ARM 36.11.101

TO: All Interested Persons:

1. On April 29, 1981, at 7:30 p.m. in the Winchester Room, Outlaw Inn, Kalispell, Montana; on April 30, 1981, at 7:30 p.m. in the Courtroom, Sanders County Courthouse, Thompson Falls, Montana; on May 5, 1981, at 7:30 p.m. in the auditorium, Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana; on May 6, 1981, at 7:30 p.m. in the High School Cafeteria, Seeley Lake, Montana; and, on May 7, 1981, at 7:30 p.m. at Sentinel High School, Missoula, Montana, public hearings will be held to consider the adoption of new rules pertaining to surface licensing of state forest lands, and the repeal of ARM 36.11.101 pertaining to cabin site maintenance and restrictions. The Department of Natural Resources and Conservation will conduct the public hearings.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana. The rule proposed to be repealed can be found on page 36-215 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE 1 DEFINITIONS When used in these rules, unless a different meaning clearly appears from the context:

(1) "Administrator" means chief administrative officer, division of forestry, department of natural resources and conservation, or any person delegated by the administrator.

(2) "Animal Unit" means one cow and calf, one horse, or five sheep;

(3) "Animal-Unit-Month" (AUM) means that amount of natural feed necessary for the complete subsistence of one animal unit for one month.

(4) "Best interest of the state" means those considerations that will produce the maximum reasonable income to the state with the least impacts on the long term productivity of the land and with the most benefits for the people of Montana.

(5) "Board" means the board of land commissioners of the state of Montana;

(6) "Carrying capacity" means the maximum number of animals that a given range is capable of supporting without injury to soil, vegetation or watershed.

(7) "Cabinsite" means a tract of land licensed for the intended purpose of seasonal or recreation use or both and not for use as a permanent residence.

(8) "Department" means department of natural resources and conservation as provided in section 2-15-3301, MCA;

(9) "Division" means division of forestry, department of natural resources and conservation.

(10) "License" means an authorization by the state for a person to use or occupy classified state forest land for specified uses for a limited period of time.

(11) "Licensee" means the person or persons in whose name a surface license appears on record in the offices of the division, whether such person or persons are the original licensee or a subsequent assignee. The term "licensee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a surface license but with whom a formal surface license has not been completed and finalized.

(12) "Person" means any individual, partnership, firm, association, corporation, governmental agency or other legal entity;

(13) "Qualified applicant" means any person who may become a qualified licensee as set forth in rule V.

(14) "Resident" means an individual who has a residence as defined by section 1-1-215, MCA, within Montana, or any entity other than an individual that does business or conducts its activities with the state.

(15) "State" means the state of Montana;

(16) "State forest land" means state land which is principally valuable for the timber that is on it, for the growing of timber or for watershed protection and is classified as such.

(17) "State Forest Land Use Authorization" means the license form currently in use and approved by the board;

(18) "Sublicense" means an agreement between a licensee and a third party whereby the third party is accorded the use of all or any part of the licensee's licensed land and pays the licensee therefor;

(19) "Sublicensee" means the person or persons to whom a licensee has licensed all or part of the unexpired term of his license and who appear as such on record in the offices of the division;

(20) "Surface" means the superficial part of land including the soil and waters which lie above any minerals;

(21) "Unlicensed land" means land that is not under license at the time of an application to license or land on which license has been recently cancelled by the division or surrendered by the licensee.

**RULE II ADMINISTRATIVE DETAILS AND INFORMATION** (1) The offices and records of the division are maintained at 2705 Spurgin Road, Missoula, Montana, under the direction and administration of the administrator. Requests for information, application for licenses, and other matters should be addressed to the division of forestry, department of natural resources and conservation, or

appropriate area or unit offices.

(2) Payment of all money required or permitted under these rules or pursuant to the provisions of any surface license shall be made to the division. All checks, drafts, and money orders shall be made payable to the state treasurer.

(3) The division maintains records of all state forest land. Such records contain all pertinent information concerning a particular tract of state forest land. Such records shall be open for public inspection at all times during regular business hours.

RULE III LANDS AVAILABLE FOR LICENSING Lands available for licensing under these rules are all state forest lands managed by the department of natural resources and conservation, division of forestry, which are presently under lease or have been identified as appropriate for such uses in unit management plans or have been analyzed under rule XIV.

RULE IV PUBLIC NOTICES FOR NEW LICENSES AND RENEWALS

(1) The division shall notify the public when a new license becomes available. A notice will be published once a week for four consecutive weeks in the official newspaper of the county in which the new license occurs and in at least one major newspaper serving the state with the notice to start 60 days prior to the execution of the new license. In addition for a new license, the division shall notify by letter those persons who have a current request for notice or a current application on file with the division.

(2) For a renewal of an existing license, the division shall notify by letter those persons who have a current request for notice on file with the division and the present licensee.

(3) Information contained in these notices will include:

(a) the type of use the license authorizes and the term of the license;

(b) a description of land area involved;

(c) the date on which and the place where the bids must be received;

(d) date, time and place of bid opening;

(e) minimum acceptable bid;

(f) specifications that certified check, money order or cashier's check in the amount of bid must accompany bid forms;

(g) information on where bid forms may be obtained.

(4) The notice will also specify that the successful bidder will be required to execute a state forest land use authorization and that the administrator may reserve the right to reject any and all bids if not in the best interest of the state. The present licensee will be given the opportunity to match the high bid pursuant to Rule VII for renewals of licenses.

RULE V WHO MAY LICENSE (1) Any person authorized by law to hold land may license state forest land and may hold more than one license except as provided in subsection (3) and more than one tract of land; however, in order to hold a state forest

license, an individual must be at least 19 years old.

(2) The division may license state forest land to the United States on terms which will protect the best interests of the state.

(3) The holder of a state forest home or cabin site license is not eligible for another license for the same use. This does not prevent the accumulation of licenses by transfer as approved by the division pursuant to Rule XVIII.

(4) Any person who has had his license cancelled and not reinstated by the board or division for any reason shall not be allowed to bid upon any license for the same use.

RULE VI ISSUANCE OF LICENSE ON UNLICENSED LAND (1) A person who desires a license on unlicensed land may apply on the standard application form to the division for a license on that particular tract of land. The division shall send an application form to any person who informs the division of his desire to license a specific tract of land.

(2) The application will be evaluated to determine feasibility of proposed use and if such use is in the best interest of the state.

(3) The original applicant will be required to provide the results of any necessary special studies in conjunction with his application to the division subject to the division's approval as to their adequacy. The applicant may contract with the division to have the division perform the studies. Such studies may include, but not be limited to, economic and environmental studies necessary in the determination of feasibility.

(4) The division will obtain department approval of all new licenses. The department will approve new licenses only if the proposed use is feasible, will not degrade the quality of the environment, is in the best interests of the state, and is consistent with other planned uses in the management area.

(5) Minimum rental rate for the license will be established.

(6) Pertinent information regarding the new license will be advertised in newspapers as provided for in rule IV.

(7) The license will be awarded to the highest bidder subject to the preference provided for in subsection (8) when the division determines that the bid is in the best interest of the state. If the high bid is rejected, the division will issue its reasons for rejection in writing to the bidder. The rejected high bidder will have 15 days to appeal this decision to the administrator. If an appeal is not received or if an appeal is denied, the license may be awarded to the next highest bidder if it is determined that this bid is in the best interest of the state.

(8) The original applicant will have a preference right to meet the successful high bid and be awarded the license.

(9) If original applicant does not wish to meet the high bid, the successful bidder will be required to reimburse the original applicant for all costs involving required special studies.

- (10) Bids by unsuccessful applicants will be returned.

RULE VII RENEWAL OF EXISTING LICENSE For the renewal of a license on land currently under license:

(1) Notice of a license renewal shall be sent as provided for in Rule IV.

(2) Any qualified person may request notice of the expiration of any license. Such requests shall include an adequate description of the state forest land involved and the address of the person requesting notice.

(3) Bid applications will be received up to 30 days prior to expiration date of license. Bid applications received after this date will be rejected.

(4) The bid shall be in writing on the form prescribed by the division and in current use. Forms may be secured from the division. Once a bid has been submitted to the division and opened, it may not be withdrawn except for a good cause as determined by the division. A certified check, cashier's check or money order, in an amount equal to the annual rental bid, must be submitted as a deposit with any bid. The deposit of any unsuccessful bidder shall be returned by May 1 of the year in which the license bid for expired. Bids for any license may only be submitted for the present use, unless the bidder submits a proposed alternate use in accordance with rule XIV.

(5) The current licensee has a preference right to renew his license, provided all rentals have been paid and the terms of the previous license have not been violated. The license shall be renewed at the rental rate provided by law or at the market value as determined by the division, provided no other applications for the license have been received by the division 30 days prior to the expiration of the license.

(6) The high bidder, for the license of the land described in the application, shall be deemed to have licensed such land at the rental price bid by him, subject to the preference right of the current licensee.

(7) If other bids are received within 30 days prior to the expiration of the license, the current licensee shall have a preference right to meet the highest bid. Such bid is deemed to be met if the amount of the high bid is received by the division from the current licensee prior to the expiration of the license or other date specified by the division. If the licensee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such requests must contain a statement of reasons why the licensee believes the bid not to be in the best interest of the state and must be accompanied by a deposit equal to 50% of the competitive bid. The division shall forward the request for a hearing to the board. The board may, after the hearing, reduce the rental from the amount bid if the licensee shows that the bid was not in the best interest of the state because it is above community standards for a license of such land, would cause damage to the tract, or impair its long term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so

inform the licensee and the competitive bidder. It is the duty of the board to secure the best licensee possible, so the state may receive the maximum return possible with the least injury occurring to the land.

(8) Regardless of any provision to the contrary in these rules, the division at renewal time may withdraw any land or portion of land from further licensing for an indefinite period if it is determined to be in the best interest of the state. Any time during the term of the license, the division may withdraw parts of land under license for alternative uses as provided for in rule XIV.

(9) When in the best interests of the state, the division may withdraw for a different use all or any portion of the land under a particular license upon a contractual agreement with the licensee. However, the term of a license may not be extended under this subsection.

(10) The exercise of the preference right by the current licensee is subject to the following qualifications:

(a) A licensee who sublicenses the entire tract for the entire license period is not entitled to exercise the preference. Licensees who sublicense only a portion of the tract for the entire term must be judged on a case by case basis to determine whether the goals of sustained yield are being met as required in Jerke v. State Department of Lands, \_\_\_\_\_ Mont., 597 P.2d 49 (1979). If the division determines that the goals of sustained yield are being met, the licensee who sublicenses only a portion of the tract is entitled to exercise the preference.

(b) Licensees who sublicense all or part of the tract for only a part of the term will lose their preference right if, on a case by case basis, it is determined by the division that the goals of sustained yield are not being met as required in Jerke v. State Department of Lands, \_\_\_\_\_, Mont., 597 P.2d 49 (1979).

(c) A licensee who violates his license loses his right to renew or the preference right only if the division determines that the violations are serious enough to warrant cancellation.

(d) An assignee of a licensee who has violated the terms of his license enjoys all rights of a new licensee who has not violated the terms of his license.

**RULE VIII INSPECTION OF LICENSES** An inspection of each license area is to be made periodically or, at the division's discretion, upon notice of an alleged violation. An inspection form will be completed at the time the inspection is made.

(1) Licensees who have violated the provisions of the license, statutes, or rules, or who have otherwise abused the resource will be notified by letter to correct the violation within a specified time period.

(2) A subsequent inspection will be made after the specified time period to determine if the violations have been corrected.

(3) If the violations continue after this specified time period, the division has the option to either cancel the license

or to correct the violations or both and charge the licensee for the cost of the correction.

RULE IX NOTIFICATION OF LICENSEES WHEN AN ACTION WILL AFFECT LICENSE AREA The appropriate forest officer shall notify a licensee of any pending major action on licensed area, such as a timber sale, granting of right-of-way, road use, surveys, or timber stand improvements.

RULE X COOPERATIVE GRAZING AGREEMENTS The division may continue existing cooperative grazing agreements with adjacent landowners for the management of range or intermingled land ownerships. These cooperative grazing agreements will not be subject to competitive bidding and public notice of their renewal will not be made.

RULE XI FORM OF BIDS FOR GRAZING LICENSES All competitive bids for grazing licenses shall be submitted in the form \$x.xx per AUM.

RULE XII TERM OF LICENSE In general, a license for grazing and other special uses shall be for a 10 year period and shall expire February 28, 10 years or less from the beginning date of the license. In general, licenses for cabins or homesites and certain commercial uses shall be for a period not to exceed 15 years and shall expire 15 years or less from the beginning date of the license.

RULE XIII MINIMUM RENTAL RATES (1) The minimum rental rate for all licenses of grazing land shall be on the basis of the animal unit month carrying capacity of the land to be licensed and will be computed according to Section 77-6-507, MCA. On grazing licenses where the annual rental was determined by bid, the bid rate shall be in effect for the full term of the license except where the annual rental is adjusted higher by Section 77-6-507, MCA, the division shall notify the licensee in order that he may adjust the annual rental rate accordingly.

(2) The minimum rental charge on cabinsites, homesites, commercial sites, grazing land or other uses shall be subject to change either by a legislative act, or by the reappraisal of carrying capacity on grazing land or the reappraisal of land values on cabinsites, homesites, other uses or commercial sites, by the division, or by action of the state board of land commissioners. A licensee of state land is required to comply with the new required minimum annual rental from the time it becomes effective.

(3) The minimum rental for renewal of all current licenses, except grazing licenses, and for any new licenses, except grazing licenses, shall be determined by a formula representing a fair market return of the appraised value of the land under license. Beginning March 1, 1982, the formula for annual rental rates for all licenses except grazing licenses will be 5% of the appraised land value or as determined by the board.



(4) Every five year period succeeding the renewal date of licenses except grazing licenses, the rental will be adjusted to reflect 5% of the current market value or as directed by the board. For licenses on which the rental rate was determined by bid, the bid rate shall be in effect for the full term of the license except where the five year rental adjustment is higher in which case the licensee shall pay the higher rate.

(5) When a license term begins after February 28 but before August 15 during the first year of the license, the licensee shall pay a rental price equal to the rental price for an entire year. When the license term begins after August 14 but before February 28 of the next year, the licensee shall pay a rental price equal to  $\frac{1}{2}$  of the yearly annual rental.

RULE XIV ALTERNATIVE USES Any person desiring to license a tract of state forest land for any use not addressed in a unit management plan must submit a letter proposing the alternate use. The division shall analyze the tract and recommend that the department approve issuing a new license according to rule VI if it determines such proposed use is consistent with unit management plan and in the best interests of the state. The current licensee will have a preference right as provided in rule VII for either the current use or the approved alternate use. The applicant must pay the costs of special studies as provided for in Rule VI.

RULE XV PAYMENTS - WHEN DUE The first year's rental shall be paid on or before the date of execution and the rental for each succeeding year shall be due on December 15. If the rental is not paid by April 1, the license shall be cancelled and the licensee will be notified by certified letter sent to the address given on the license. When such a license takes effect after September 30 and before February 28 of the next year, the licensee shall pay both the rental for  $\frac{1}{2}$  of the yearly rental due for the fractional part of a year and the whole yearly rental due for the next succeeding year, before the license is executed.

RULE XVI RESERVATION (1) The state reserves to itself and its representatives and authorized licensees the right to enter upon state forest lands for management activities and for the purpose of prospecting for, exploring for, mining, drilling for, developing or removing any valuable substance beneath the surface of the land.

(2) Representatives of the Montana historical society have the right to enter any state lands at any reasonable time to perform their duties in connection with the "State Antiquities Act", Title 22, Chapter 3, part 4, MCA. Any person discovering an object or site of historic, prehistoric, archaeological, paleontological, scientific, architectural or cultural interest on state land shall report such discovery to the division and the Montana historical society and take all steps necessary to preserve such site or object.

(3) The right to sell or otherwise dispose of any interest other than that for which the licensee has licensed the premises

including hunting or fishing access privileges on state land shall remain with the state. The licensee will conform to state law and may not post state land he has under license unless he has received prior approval of the administrator in writing. The administrator may allow posting in order to prevent loss or damage of the licensee's improvements or trespass which would impede his licensed use.

(4) The division may also reserve for public use other lands which might provide public access.

RULE XVII OPERATION AGREEMENTS (1) The division has the authority to make management decisions in unusual circumstances in order to protect the best interests of the state.

(2) A licensee of state forest land shall keep the land free of noxious weeds and pests and assume all responsibility for fire prevention and suppression necessary to protect the forage, trees, and improvements. The licensee shall perform these duties at his own cost and in the same manner as if he owned the land. Noxious weed requirements will be considered met if any state land shall be included in a weed control or weed seed extermination district and the licensee complies with section 7-22-2149, MCA.

RULE XVIII TRANSFER OF LICENSES - ASSIGNMENTS AND SUBLICENSE (1) All assignments and sublicenses shall be made on forms prescribed by the division. An assignment in order to be binding on the state and a sublicense in order to be legal

must receive prior approval by the division. A copy must be filed with the division and a fee paid as specified in ARM 26.2.401 must be paid. If a sublicense or assignment is made on terms less advantageous to the sublicensee than terms given by the state or without receiving the division's approval and filing a copy of the sublicense, the administrator shall cancel the license subject to the appeal procedures provided in rule XXII.

(2) A licensee of state forest land shall not sublicense such land as part of the sale of his own fee lands or his improvement on state land. In order to transfer such license as part of the sale of fee lands or improvements on state lands, the licensee must assign the license as provided in subsection (1). Failure to comply with the terms of this rule shall be grounds for cancellation of the license.

(3) A licensee who wishes to surrender his license whole or in part must submit a request to the division for approval. Also upon request two or more licenses for the same use may be combined when held by the same licensee. The request from the licensee must be in writing and if approved by the administrator the license or licenses will be combined with the license which expires first so that no license shall run longer than its prescribed term.

(4) In the event of a licensee's death, the license shall be transferred to the decedent licensee's estate. The division shall consider the estate to be the licensee's until such time as proof of different ownership is received by the division. In

most cases, the division shall require a copy of the decree of distribution or assignment by a court appointed personal representative. Exceptions to this subsection may be allowed when the division determines that an unusual situation exists.

(5) If a licensee sells the improvements of a license, the license may only be transferred to the buyers of the improvements.

(6) Licensee shall not sublicense or transfer state land for speculation nor use the premises as part of a business except for approved commercial use.

RULE XIX EASEMENTS The state reserves to itself the right to grant easements on state forest lands, the surface of which is licensed. The board may grant easements upon state forest lands without the prior consent of the licensee. However, the board will require the grantee to compensate the licensee for damages to improvements, crops, or the license interest and file proof of that fact with the division prior to the granting of such easement. In cases where the grantee and licensee cannot agree on just settlement for damages, the arbitration procedure set forth in Rule XXIII(4) shall be followed to arrive at a just settlement.

RULE XX WATER RIGHTS Any water right secured by a licensee shall be secured in the name of the state of Montana, department of natural resources and conservation. Prior to making application for a water right, the licensee shall first obtain written approval from the administrator, division of forestry.

RULE XXI LIEN ON IMPROVEMENTS The state has a lien on all improvements upon state lands for any and all payments due the state. This lien shall have priority over all other liens. Any person acquiring an interest in such improvements shall be subject to this lien.

RULE XXII CANCELLATION OF LICENSES (1) The administrator may cancel any license if the licensee commits fraud or misrepresents facts to the division which, if known, would have had an effect on the issuance of the license or uses the land for any purpose not authorized in the license or fails to manage the land in a husband-like manner consistent with conservation of the land resources and the perpetuation of productivity or for any other cause not in the best interest of the state or for any other reason provided by law. The licensee of a cancelled license shall not be entitled to any refunds of payments made or exemptions from any payments due to the state.

(2) The division shall notify the licensee by certified mail of the cancellation and the reason for it, and the license shall be deemed cancelled 15 days after such notice is received by the licensee, unless the licensee filed a notice of appeal with the division prior to the expiration of the 15 day period in which case the license remains in effect until the board decides the matter. Within 10 days after receipt of notice of appeal,

the division shall notify the licensee of the time and place of the hearing before the board. The time and place of the hearing may be changed by the division after 10 days notice to the licensee. The board shall conduct a contested case hearing under the rules set out in the Montana Administrative Procedures Act, Title 2, Chapter 4, MCA. The burden of proof to show why the license should not be cancelled shall be on the licensee. The board may affirm the decision of the division, reinstate the license and restore all rights and privileges, or reinstate the license and assess a penalty in an amount sufficient to cover any damages sustained. If the board does not reinstate the license, the land shall be withdrawn from licensing or relicensed in accordance with Rule VI.

RULE XXIII IMPROVEMENTS (1) A licensee may place improvements on state forest land which are necessary for the conservation or utilization of such forest land after submitting a written plan to the division and receiving written approval of the division.

(2) After a license has been cancelled or surrendered by the licensee, the licensee will have 60 days to remove or otherwise dispose of the improvements. The 60 day period may be extended by the division upon written application. At the end of this period, all remaining improvements shall become the property of the state.

(3) Prior to the renewal of an existing license to a new licensee, a licensee must prove that he has offered to pay or has paid the former licensee the value of the improvements either as agreed upon with the former licensee or as fixed by arbitration or that the former licensee has decided to move the improvements. If the former licensee does not agree on the value of the improvements, begin arbitration procedures pursuant to this rule, or remove the improvements within 60 days after the license expires, then all improvements remaining at the end of the 60 day period shall become the property of the state. The 60 day period may be extended by the division upon written application.

(4) When the licensee wishes to sell improvements and the parties cannot agree upon a reasonable value, such value shall be determined by arbitration. The licensee or purchaser and the former licensee shall each appoint an arbitrator with a third arbitrator appointed by the two arbitrators first appointed. The value of the improvements shall be fixed by the arbitrators and such determination shall be binding on both parties; however, either party may appeal within 10 days to the division. Upon appeal by either party, the division may appoint a qualified appraiser to determine the value of the improvements, and the division's determination shall be final. The division shall charge the cost of its examination to the parties in such proportion as justice may require. The compensation for the arbitrators shall be paid in equal shares by both parties.

RULE XXIV APPLICATION FOR RESOURCE DEVELOPMENT PROJECTS

(1) Any licensee of state forest land may request the

division to make a resource development request to the board. The division will consider projects that promote development of land in the best interest of the state, including but not limited to, stock water development, erosion control projects and development of certain vegetative practices.

(2) The division will require the licensee to furnish certain information, including areas involved, potential return to the state, potential costs, and other pertinent details. The division shall examine each proposal to determine its feasibility and may request assistance in such examination from appropriate state and federal agencies. The licensee must cooperate with the division in planning the project.

(3) A projects request will be approved by the division if it is in the best interest of the state and if in the judgment of the division the licensee has a record of good management of the land. Upon division approval, a project request will be submitted to the board.

RULE XXV FORMS The following forms are used in the administration of these rules:


- (1) Cabinsite Rules and Regulations (Form 904);
- (2) State Forest Cabin-Homesite Authorization;
- (3) State Forest Land Use Authorization - Other
- (4) State Forest Land Use Authorization - Grazing (Form 905)
- (5) Cooperative Grazing License
- (6) Application for State Forest Land Use Authorization
- (7) Sublicense of State Forest Land Use Authorization;
- (8) Affidavit of Assignment State Forest Land Use Authorization.

4. The purpose of the proposed rules is to provide a procedure for the surface licensing of suitable tracts of state forest land that will guarantee a reasonable return to the state, will consider the best interests of the state, and will provide a just and equitable procedure for renewing surface licenses or awarding new licenses. The repeal of ARM 36.11.101 is proposed because the Department feels that cabinsite maintenance requirements and restrictions on cabinsites can be accomplished better in each license agreement itself.

5. Interested persons may present their date, view, or arguments, either orally or in writing at the hearings. Written data, views, or arguments may also be submitted to Earl B. Salmonson, Division of Forestry, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana, 59801, no later than May 28, 1981.

6. Earl B. Salmonson has been designated to preside over and conduct the hearings.

7. The authority of the Board of Land Commissioners to adopt the rules is Section 77-6-104, MCA. The rules implement Sections 77-1-202 through 77-1-204, 77-1-604, 77-1-605, and Title 77, Chapter 6, MCA.

  
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Leo Berry, Jr., Director  
Department of Natural Resources  
and Conservation

Certified to the Secretary of State February 2, 1981.

STATE OF MONTANA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING  
BEFORE THE BOARD OF MORTICIANS

IN THE MATTER of the Proposed ) NOTICE OF PROPOSED AMENDMENT  
Amendments of ARM 40.28.407 ) OF ARM 40.28.407 RENEWALS  
concerning renewal fees, and ) and ARM 40.28.604 CASKET SELEC-  
ARM 40.28.604 concerning cas- ) TION  
ket selection and pricing. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 15, 1981, the Board of Morticians proposes to amend ARM 40.28.407 concerning renewal fees and ARM 40.28.604 concerning casket selection and pricing.

2. The proposed amendment of ARM 40.28.407 will change the fees listed in subsections (1) and (2) and will read as follows: (new matter underlined, deleted matter interlined)

"40.28.407 RENEWALS (1) The renewal fee for a mortician's license shall be \$15 50 per year.

(2) The renewal fee for a funeral director's license shall be \$10 25 per year.

(3)....."

3. The board is proposing the change in the two fees to the maximum amount allowed by the statutes because the earmarked revenue balance is not sufficient to offset the amount of money left in the board's appropriation. Nor will the money brought in by renewals be sufficient to offset the amount needed to administer the board the remainder of this fiscal year and next fiscal year. The authority of the board to make the proposed change is based on section 37-19-202, MCA and implements sections 37-19-301 and 302, MCA.

4. The proposed amendment to ARM 40.28.604 will read as follows: (new matter underlined, deleted matter interlined)

"40.28.604 ~~CASKET-SELECTION~~ ITEMIZATION (1) An itemized listing of the service charges must be posted in a place easily seen by the consuming public.

(2) Each mortuary shall have a card or brochure in each casket on display, stating the price of funeral service using said casket and listing the services and other merchandise included in the price. Unless an itemized listing of the prices is posted in a conspicuous place, the card or brochure shall state that an itemization of the price of the casket, merchandise, services or use of facilities will be furnished to the consumer of a funeral or a part thereof which is not desired, then a credit therefore shall be granted.

(a) Each mortuary must display the least expensive casket available.

(3) If the quoted price includes a basic component of a funeral or a part thereof which is not desired, than a credit therefore shall be granted."

5. The board is proposing the amendment to require an

itemized list be readily available to the public. The requirement of the least expensive casket being on display is to be sure the public is aware that the least expensive casket is available. The authority of the board to make the proposed change is based on section 37-19-403, MCA and implements section 37-19-403, MCA.

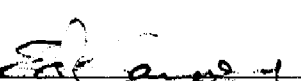
6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Morticians, Lalonde Building, Helena, Montana 59620, no later than March 13, 1981.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Morticians, Lalonde Building, Helena, Montana 59620, no later than March 13, 1981.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

9. The authority and implementing sections are listed after each proposed rule change.

BOARD OF MORTICIANS  
JACK SEVERNS, CHAIRMAN

BY:   
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 2, 1981.



STATE OF MONTANA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING  
BEFORE THE BOARD OF NURSING

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT  
Amendment of ARM 40.30.406 ) OF ARM 40.30.406 LICENSURE  
concerning licensure of for- ) OF FOREIGN NURSES  
eign nurses. )

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On March 15, 1981, the Board of Nursing proposes to amend ARM 40.30.406 concerning licensure of foreign nurses.

2. The amendment will add two new subsections to the current rule and will read as follows: (new matter underlined, deleted matter interlined)

"40.30.406 LICENSURE FOR FOREIGN NURSES (1)...

(2)...

(3) Candidates for licensure as registered nurses will be required to show evidence of having passed the Commission on Graduates of Foreign Nursing Schools screening examination prior to writing the Montana licensing examination.

(4) Candidates for licensure as practical nurses will be required to show evidence of having successfully completed an English Proficiency examination before admission to the Montana licensing examination."

3. The board is proposing the amendment because the CGFNS examination, which determines the nurses' ability to pass the state licensing examination before they come to the United States, helps protect those foreign nurses who are not prepared for professional practice in this country against relocation costs, personal disappointment and possible exploitation. At the same time, it helps assure the American health consumer of minimum safe practices. The use of the CGFNS exam and the English Proficiency exam will provide reasonable assurance that the graduates of foreign nursing schools will be successful on the licensing exams. In recent years only about 20% of the foreign nurses have passed the exam on the first writing.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing, Lalonde Building, Helena, Montana 59620, no later than March 13, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Nursing, Lalonde Building, Helena, Montana 59620, no later than March 13, 1981.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the board to make the proposed amendment is based on section 37-8-202(2), MCA and implements section 37-8-405 (3) and 37-8-415 (3), MCA.

BOARD OF NURSING  
JANIE CROMWELL, R.N., PRESIDENT

BY: Ed Carney  
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 2, 1981.

BEFORE THE WORKERS' COMPENSATION COURT  
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF ADOPTION OF
adoption of amendments	)	AMENDMENTS TO ARM 2.52.213
to ARM 2.52.213 and	)	and 2.52.220.
2.52.220.	)	

TO: All interested Persons

1. On December 26, 1980 the Workers' Compensation Court published a Notice of Proposed Amendments to ARM 2.52.213 and 2.52.220 of the existing procedural rules of the Workers' Compensation Court at page 3057 of the 1980 Montana Administrative Register, Issue No. 24.

2. The Workers' Compensation Court has adopted the amendments to the ARM rules as proposed.

3. No comments or testimony were received. The Court has amended its rules ARM 2.52.213 PRETRIAL CONFERENCE to set forth requirements for exhibits and ARM 2.52.220 FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND BRIEFS to clarify filing deadlines as proposed.

  
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WILLIAM E. HUNT, JUDGE

CERTIFIED TO SECRETARY OF STATE 1-30-81

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 10.7.111 specifying )	10.7.111 QUALIFICATIONS FOR
criteria for state reimburse- )	BUS DRIVERS
ment for bus transportation )	
for the first-aid requirement.)	

TO: All Interested Persons

1. On December 26, 1980 the superintendent of public instruction published notice of the proposed amendment of Rule 10.7.111 outlining the qualifications of school bus drivers at pages 3059 through 3061, Issue #24 of the Montana Administrative Register.

2. The superintendent of public instruction has amended the rule as proposed.

3. No requests for hearing nor comments were received.

ED ARGENBRIGHT  
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY 

Certified to the Secretary of State January 27, 1981.

STATE OF MONTANA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING  
BEFORE THE MONTANA STATE BOARD OF MEDICAL EXAMINERS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM  
of ARM 40.26.501 concerning ) 40.26.501 APPROVAL OF SCHOOLS  
approval of schools and ARM ) and 40.26.502 REQUIREMENTS  
40.26.502 concerning require- ) FOR LICENSURE  
ments for licensure. )

TO: All Interested Persons:

1. On December 26, 1980, the Montana State Board of Medical Examiners published a notice of proposed amendment of ARM 40.26.501 concerning approval of schools and ARM 40.26.502 concerning requirements for licensure at pages 3088-3089, 1980 Montana Administrative Register, issue number 24.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING  
BEFORE THE BOARD OF NURSING

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM  
of ARM 40.30.402, subsection ) 40.30.402 (7) LICENSURE BY  
(7) concerning licensure by ) EXAMINATION and 40.30.408  
examination and 40.30.408, sub- ) (1)(a) TEMPORARY PERMIT  
section (1)(a) concerning )  
temporary permits )

TO: All Interested Persons:

1. On December 26, 1980, the Board of Nursing published a notice of proposed amendment of ARM 40.30.402 (7) concerning licensure by examination and 40.30.408 subsection (1)(a) concerning temporary permits, at pages 3090-3091, 1980 Montana Administrative Register, issue number 24.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BY: 

ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, February 2, 1981.

VOLUME NO. 39

OPINION NO. 3

APPROPRIATIONS - Control of expenditures through; Funds received by state government restricted by law, trust agreement or contract;

DUE PROCESS - Relationship between assessment and value of benefit thereby conferred;

LEGISLATIVE BILLS - Titles to acts required to clearly express subject;

LEGISLATURE - Control of expenditures through appropriation; Power of appropriation;

STATE AGENCIES - Allocation to departments for administrative purposes only; Control over expenditures; Wheat Research and Marketing Committee;

TAXATION AND REVENUE - Assessments on wheat and barley; Distinct nature of assessments;

MONTANA CODE ANNOTATED - Sections 2-15-121, 2-15-3002, 17-2-101, 17-2-102, 17-8-101, 80-11-201, et seq.;

CONSTITUTION OF MONTANA - Article V, section 11; Article VIII, section 14.

HELD:1. The Legislature has authority, through the appropriations process, to direct the expenditure of monies collected through the annual assessment on wheat and barley. The Wheat Research Committee may expend funds received as gifts or grants without appropriation and such other amounts as the Legislature may direct.

2. The expenditure of monies collected through the annual assessment on wheat and barley must conform to the purposes and policies set forth in the wheat research and marketing statutes, sections 80-11-201, et. seq., MCA.

20 January 1981

W. Gordon McOmber, Director  
Department of Agriculture  
Agriculture/Livestock Building  
Helena, Montana 59601

Dear Mr. McOmber:

You have requested my opinion regarding a number of questions related to expenditures from the funds of the Wheat Research and Marketing Committee. The issues referred to in your correspondence are as follows:

1. Whether the Montana Wheat Research and Marketing Committee has the exclusive power to direct the expenditure of monies collected through the annual assessment on wheat and barley.
2. Whether funds collected through the annual assessment on wheat and barley may properly be expended to fund a portion of the Centralized Services, Crop and Livestock Reporting, and Transportation Units of the Montana Department of Agriculture.

Before entering into a discussion of the legal issues presented by your inquiry, it is necessary to set forth summary background information. The Wheat Research and Marketing Committee is established and given direction by sections 80-11-201, et seq. and section 2-15-3002, MCA. The Committee is empowered pursuant to section 80-11-205, MCA, to provide for the conduct of research into the production, marketing, and uses of wheat and barley and to enter into contracts with various organizations for the purposes of improving wheat or barley quality, increasing efficient production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative

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Montana Administrative Register

crops for wheat and barley, and carrying out all research and marketing contemplated by the relevant statutes.

Funds for the operation of the Committee are derived from an annual assessment on wheat and barley set initially by statute at 2½ mills per bushel and thereafter set by the Committee. The assessment is levied and imposed on each grower of wheat or barley in the State of Montana. It is, however, subject to refund if the grower submits a written request for the same to the Department of Agriculture between 30 and 90 days following the assessment. Section 80-11-207(4), MCA. In practice, this procedure is rarely utilized. Pursuant to section 80-11-210, an account is established in the federal and private revenue fund for deposits of all millage levies collected pursuant to the assessment and for the proceeds from all gifts, grants or donations to the Department for various types of research authorized by the statute. The statute goes on to direct that the account be kept separate and apart from all other accounts of the Department of Agriculture and shall be "maintained for the purposes of this part."

In both the 1977 and 1979 sessions a Joint Budget Subcommittee, in appropriating for the Department of Agriculture, determined that a portion of the grain assessment receipts be allocated to the Central Services division of the Department of Agriculture. That determination is part of the legislative history of the general appropriations bills for both sessions.

1. Whether The Montana Wheat Research and Marketing Committee Has The Exclusive Authority To Direct The Expenditure Of Monies Collected Through The Assessment On Wheat And Barley.

Legislative control over expenditures of the various state agencies and boards such as the Wheat Committee has routinely been exercised through the power of appropriation. The source of the appropriation power is found at Article 8, section 14 of the Constitution of Montana 1972, which provides in part:

Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law...

Restrictions on the appropriation power include a requirement that the legislature shall balance the budget and a



requirement of strict accountability of all revenue received and money spent through the enactment of protective legislation. See Article VIII, sections 9 and 11, Constitution of Montana 1972. Pursuant to the Treasury Fund Structure Act of 1963 (sections 17-2-101, et seq., MCA), all funds received by state government are classified in order to:

... simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public monies, and to enable the financial records to accurately reflect governmental costs and revenues.

Aside from a number of specialized university system accounts, there are nine basic funds. Pursuant to section 80-11-210, MCA, all of the funds received by the Wheat Research and Marketing Committee are required by law to be placed in the federal and private revenue fund established by section 17-2-102(4), MCA. The Fund is described in the statute as consisting of "...all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government." Pursuant to section 17-8-101(1):

Moneys deposited in ...the federal and private revenue fund...(with the exception of refunds), shall be paid out of the treasury only on appropriation made by law.

In Board of Regents v. Judge, et. al, 168 Mont. 433, 446, 543 P.2d 1323 (1975), the Supreme Court held, inter alia, that to the extent that section 17-8-101 could be read to confer upon the legislature the power to appropriate private funds received by state government which are restricted by law, trust agreement or contract, it was beyond the scope of the legislature's power of appropriation.

The precise issue in answering your first question is whether the grants and assessments received by the Wheat Research and Marketing Committee and deposited in the federal and private revenue fund are restricted by law to an extent which would preclude appropriation and any associated restriction of expenditure.

Gifts, grants or donations for reasearch purposes may be accepted by the Department of Agriculture and are available

for expenditure directly by the committee in accordance with any conditions of the grants, gifts, or donations. See § 80-11-208, MCA. Under the principles set forth in Board of Regents v. Judge, these monies are not subject to the appropriation power. The Supreme Court has held that it is therefore beyond the power of the legislature to direct the manner in which such grants will be spent. On the other hand, receipts from assessments are not conditioned or restricted by contract. They are, however, restricted by law; that is, the purposes to which these funds may be committed are as set forth in sections 80-11-201, et seq., MCA. Nowhere within the terms of these restrictions, however, is there any indication of a legislative intent to remove the consideration of these funds from the budget process. On the contrary, pursuant to section 2-15-3002, MCA, the Committee is allocated to the Department of Agriculture for administrative purposes which requires inclusion of the committee's budgetary request in the Department of Agriculture's budget. See § 2-15-121, MCA.

While the law provides that the assessment receipts are subject to the appropriations process, the legislature must direct the expenditure of these funds in a constitutionally permissible manner. The restrictions on expenditures in this case must conform with the purposes as set forth in sections 80-1-201, et seq., MCA. While these purposes can be changed from time to time through legislative enactment, the appropriation bill would itself be an improper mechanism to effect such a change. This difficulty arises due to the evil which would be occasioned by concealing a change in the "substantive" law in a broad appropriations measure.

Article V, section 11, Constitution of Montana 1972 provides in relevant part:

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

\* \* \*

(6) A law may be challenged on the ground of non-compliance with this section only within two years after its effective date.

These provisions are similar to the section of the 1889 Constitution construed by the Montana Supreme Court in City

of Helena v. Omholt, 155 Mont. 212, 468 P.2d 764 (1970).

In Omholt, an action was brought challenging a provision of a special appropriation bill which resulted in a substantive change in the Metropolitan Police Law. Pursuant to the substantive law, municipalities are authorized to establish a police reserve fund, supported in part by a three percent deduction from police officer's wages. The State of Montana cooperates by contributing an amount equivalent to ten percent of the salaries earned by policemen in participating municipalities.

A special appropriation bill providing for the state "match" contained a proviso that municipalities not deducting five percent of their policemen's wages were ineligible for the state contribution. The effect of the proviso was to raise by two percent the contribution required of police officers to establish an eligible reserve fund.

The court struck down the restrictive proviso based upon a finding that the special appropriations bill contained a "false and deceptive" title. Omholt at 220. The court opined in rather strong language that appropriations bills should not be held to amend substantive statutes by implication.

In considering the purpose of the relevant constitutional restrictions, the court stated:

...those purposes are to restrict the legislature to the enactment of laws the subjects of which are made known to lawmakers and to the public, to the end that any one interested may follow intelligently the course of pending bills to prevent the legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title.

Omholt at 220.

In light of this constitutional restriction, and the principles as set forth in Board of Regents v. Judge and City of Helena v. Omholt, it is my opinion that the assessments collected pursuant to the provisions of section 80-11-201, et seq., MCA, are subject to the appropriation powers of the

legislature. However, in appropriating and directing the expenditure of these monies, the legislature is restricted to the purposes as set forth in the Wheat Research statutes. To deviate from or expand upon those purposes without a corresponding amendment to the substantive Wheat Research statutes could subject the appropriation to a challenge similar to that brought successfully in the Omholt case.

2. Whether The Assessment Collected Pursuant To The Wheat Research Statutes May Be Expended To Fund A Portion Of The Operations Of The Centralized Services, Crop And Livestock Reporting, And Transportation Units Of The Montana Department Of Agriculture.

In correspondence requesting this opinion, you have asked me to discuss a number of executive proposals under consideration for the expenditure of these monies.

As noted in the opening discussion of these issues, the last two Montana Legislatures have appropriated approximately \$20,000 from Wheat Research and Marketing funds to support the operations of the Central Services Unit of the Department of Agriculture. Central Services provides administrative services to the Committee in the form of payroll services, receipt and accounting for assessments, budgetary monitoring, and securing the issuance of warrants for grants and other miscellaneous purposes of the committee.

Pursuant to the terms of sections 2-15-3002 and 2-15-121, MCA, the Committee is required to utilize the administrative services provided for by the Central Services Division. It is beyond dispute, that if the Committee is authorized and directed to utilize certain services (those services being essential to the carrying out of the purposes directed by law) the authority and direction carries with it by necessary implication the authority to pay for those services.

The particular level of support to be provided to Central Services is for the Legislature to determine. However, since the type of assessment here authorized is distinct from taxes levied for the general public good, some caution must be exercised. Due process considerations impose limitations identified in the discussion of an analogous situation in State ex rel Malott v. Board of Commissioners, 89 Mont. 37, 296 P. 1 (1930):

The justification and authority for levying special assessments is derived from the benefits which the expenditure of the tax or assessment confers on the owners of the land from special assessment districts and a tax out of all proportion to the benefits conferred could not be sustained.

Applying this principle to the issue discussed herein, it is clear that the amount of the Wheat Research assessment appropriated to fund Central Services must have some substantial relationship to the cost of services supplied by Central Services to the Committee.

Little discussion is necessary to relate the activities of the Crop and Livestock Reporting and the Transportation and Marketing Units to the purposes outlined in the Wheat Research and Marketing statutes. The Crop and Livestock Reporting program is a joint federal/state effort to prepare estimates and reports of production, supply, price, and other items necessary to the orderly operation of farm markets (ARM 4.1.101). To the extent these estimates and reports relate to wheat and barley, they further the purposes of the Wheat Research statutes. The Transportation and Marketing Unit of the Department provides technical transportation expertise to agricultural commodity producers and to the extent the expertise is directed towards the two commodities addressed in the Wheat Research statutes, they further the purposes of those laws. Appropriations from the assessments provided for in section 80-11-206, MCA, insofar as they relate to the cost of relevant services provided to further the purposes of the Wheat Research statutes, are within the bounds of the restrictions placed upon the use of these funds.

Once again, I am compelled to underscore the distinct nature of the assessed funds. Due process requires careful consideration by the legislature in appropriating these monies to ensure that amounts expended substantially relate to the fair costs of the services provided to further the purposes for which the assessment is levied. The agency should keep these considerations in mind when making its funding proposals to the Legislature.

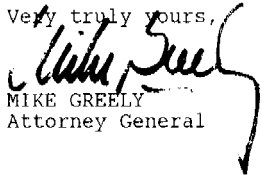
THEREFORE, IT IS MY OPINION:

1. The Legislature has authority, through the appropriations process, to direct the expenditure of

monies collected through the annual assessment on wheat and barley. The Wheat Research Committee may expend funds received as gifts or grants without appropriation and such other amounts as the Legislature may direct.

2. The expenditure of monies collected through the annual assessment on wheat and barley must conform to the purposes and policies set forth in the wheat research and marketing statutes, sections 80-11-201, et. seq., MCA.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 39

OPINION NO. 4

MUNICIPAL HOUSING AUTHORITY - Powers and responsibilities;  
STATUTORY CONSTRUCTION - Plain meaning of unambiguous terms  
prevail;

LOCAL GOVERNMENT - Municipal housing;

AUTHORITY - Powers and responsibility.

- HELD:1. Municipal housing authorities may participate in the administration or management of rental contracts pursuant to the federal section 8 existing rent supplement program.
2. The administration of such rent supplement programs is restricted to the statutory boundary of municipal housing authorities.

29 January 1981

Mr. Jim Nugent  
City Attorney  
201 W. Spruce Street  
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on the following questions:

1. May a municipal housing authority in the state of Montana participate in the administration or management of rental contracts pursuant to the federal section 8 existing rent supplement program?
2. If so, may the municipal housing authority administer the rent supplement program outside the statutory 10-mile boundary?

3-2/13/81

Montana Administrative Register

Municipal housing authorities are established by Title 7, Chapter 15, Parts 44 and 45, of the Montana Code Annotated (MCA). Section 7-15-4401 sets forth the policy of municipal housing authorities and says in part:

(6) [T]he clearance, replanning, and reconstruction of the areas in which unsafe and unsanitary housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired. ...

The federal section 8 existing rent supplement program is a program of the U.S. Department of Housing and Urban Development (HUD). It is not a public housing program but a rent supplement program involving dwelling units not owned or managed by any government entity. Such programs are not specifically dealt with by state law. The program does provide safe, sanitary dwellings for persons of low income and, therefore, falls within the range of duties allocated to municipal housing authorities. Section 4-15-4451(2)(d), MCA, gives a housing authority the power to "make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority. ..." Sections 7-15-4401 and 7-15-4451, MCA, together indicate that a municipal housing authority may participate in the federal section 8 rent supplement program.

Regarding your second question, section 7-15-4413, MCA, provides in part: "The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city. ..." The Missoula Municipal Housing Authority wants to contract to administer the federal section 8 program in Ravalli and Superior counties. The intention is not to develop or plan any new housing areas but simply provide a local agency through which to distribute federal funds needed to achieve adequate housing needs. The federal government's requirements indicate that all that is necessary is that a "public housing authority" administer the funds. HUD is willing to allow Missoula's housing authority to manage the funds despite the lack of any express provision in state law. While there is authority permitting a municipal housing authority to use section 8 funds within the territorial boundaries set by statute, no such authority exists to by-pass the 10 mile



limit. Section 7-15-4453, MCA, states:

The authority and its commissioner shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this part [44] and part [45]...

It is beyond the scope of power of a municipal housing authority to distribute section 8 funds outside the 10 mile boundary. Should these provisions prove inequitable the proper forum in which to seek clarification is the legislature.

THEREFORE, IT IS MY OPINION:

1. Municipal housing authorities may participate in the administration or management of rental contracts pursuant to the federal section 8 existing rent supplement program.
2. The administration of such rent supplement programs is restricted to the statutory boundary of municipal housing authorities.

Very truly yours



MIKE GREELY  
Attorney General